

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL NO. H-09-342
	§	(J. Hittner)
ROBERT ALLEN STANFORD;	§	
LAURA PENDERGEST-HOLT;	§	
GILBERTO LOPEZ;	§	
MARK KUHRT; and	§	
LEROY KING	§	

**JOINT MOTION TO PERMIT UNDERWRITERS TO VIEW MATERIAL
FILED UNDER SEAL CONCERNING ALLEGATIONS OF INSURANCE
FRAUD**

Defendant Robert Allen Stanford and Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Company ("Underwriters") are currently litigating an insurance coverage dispute (the "Coverage Action") before the Honorable F. Nancy Atlas, Case No. 4:09-cv-3712. Pursuant to Judge Atlas' order in the Coverage Action, Defendant Stanford and Underwriters file this Joint Motion asking this Court to permit Underwriters to view certain materials filed under seal in this proceeding relating to allegations of insurance fraud by Mr. Stanford's counsel.

Mr. Robert Bennett, lead criminal counsel for Defendant Stanford, has requested that Underwriters consent to his representation of Mr. Stanford in this proceeding and agree to pay his reasonable and necessary Costs, Charges and

Expenses. However, Underwriters have learned that Mr. Bennett's co-counsel, Mr. Mike Essmyer, has alleged that Mr. Bennett may have engaged in insurance fraud or other improprieties in submitting his fee application to Underwriters. Mr. Essmyer's allegations along with Mr. Bennett's responses to those allegations were filed under seal in this Court.

Mr. Bennett and other witnesses including Dr. Nhan Nguyen, Attorney Ashley Yea, and Attorney Tom Berg have denied that any acts of insurance fraud occurred to the best of their knowledge, and this information has been provided to Underwriters. Mr. Bennett denies engaging in any acts of insurance fraud or making any statements about engaging in any acts of insurance fraud.

During a recent hearing in the Coverage Action, Judge Atlas recognized that Underwriters should be afforded an opportunity to review all material concerning allegations of insurance fraud before Underwriters determine whether to consent to Mr. Bennett's representation of Mr. Stanford.¹ Judge Atlas subsequently ordered Mr. Stanford and Underwriters to file a joint motion and agreed order asking this Court to permit Underwriters to view all material filed under seal related to

¹ Tr. of June 3, 2010 Hr'g before the Hon. Nancy F. Atlas at 99:10-100:4, *Laura Pendegest-Holt v. Certain Underwriters at Lloyd's of London and Arch Specialty Insurance co.*, No. 4:09-cv-03712 (S.D.Tex. Nov. 17, 2009) (noting, "There's some indication from the underwriters that there's been an accusation of some sort of improprieties with respect to insurance. And the underwriters want three sealed affidavits filed by Bennett in the criminal case to be reviewed, as well as, I suppose, they didn't ask for this, but the Essmyer materials that were filed under seal . . . I don't need to see the material, at least at this point. But the underwriters do because of allegations that have been made. And it sounds like that would be a reasonable course to just do it under seal to the Underwriters for the use only in their connection with fee approval.")

allegations that Mr. Bennett engaged in insurance fraud or other improprieties concerning the insurance policies. This material includes, but is not limited to, any motions or exhibits Mr. Essmyer filed relating in any way to allegations that Mr. Bennett or the Bennett-Nguyen Joint Venture engaged in acts of insurance fraud and any responses Mr. Bennett filed to those motions (collectively, the “Sealed Material”).

Accordingly, Mr. Stanford and Underwriters jointly request that this Court order that Underwriters are permitted to view the Sealed Material.

Respectfully Submitted,

By: /s/Barry A. Chasnof
Barry A. Chasnof (SBN 04153500)
bchasnof@akingump.com
Attorney-in-Charge
Daniel McNeil Lane, Jr. (SBN 00784441)
nlane@akingump.com
AKIN GUMP STRAUSS HAUER & FELD LLP
300 Convent Street, Suite 1600
San Antonio, Texas 78205
Phone: (210) 281-7000
Fax: (210) 224-2035

**ATTORNEYS FOR CERTAIN
UNDERWRITERS AT LLOYD'S OF LONDON
AND ARCH SPECIALTY INSURANCE
COMPANY**

By: //s Robert S. Bennett by permission
Robert S. Bennett (SBN 02150500)
Bennett Nguyen Joint Venture
515 Louisiana St., Suite 200
Houston, Texas 77009
Phone: (713) 225-6000
Fax: (713) 225-60001

**ATTORNEY FOR DEFENDANT ROBERT
ALLEN STANFORD**

By: //s Michael M. Essmyer
Michael M. Essmyer (SBN 06672400)
Essmyer, Tritico, & Rainey LLP
5111 Center St.
Houston, Texas 77007
Phone: (713) 869-1155
Fax: (713) 869-8957

**ATTORNEY FOR DEFENDANT ROBERT
ALLEN STANFORD**

CERTIFICATE OF CONFERENCE

I hereby certify that the counsel for Underwriters conferred with AUSA Gregg Costa on this Motion. Mr. Costa indicated that the government does not take a position on this Motion, because the sealed documents are not those of the government. .

/s/Barry A. Chasnof
BARRY A. CHASNOFF

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all known counsel of record by electronic delivery through the Court's electronic filing system on June 10, 2010.

/s/Barry A. Chasnof
BARRY A. CHASNOFF

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL NO. H-09-342
	§	(J. Hittner)
ROBERT ALLEN STANFORD;	§	
LAURA PENDERGEST-HOLT;	§	
GILBERTO LOPEZ;	§	
MARK KUHRT; and	§	
LEROY KING	§	

**ORDER GRANTING JOINT MOTION TO PERMIT UNDERWRITERS TO
VIEW CERTAIN MATERIAL FILED UNDER SEAL CONCERNING
ALLEGATIONS OF INSURANCE FRAUD**

On this ___ day of June 2010, this Court considered Defendant Robert Allen Stanford's and Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Company's ("Underwriters") Joint Motion to Permit Underwriters to View Material Filed Under Seal Concerning Allegations of Insurance Fraud (the "Motion"). Having considered the Motion, any responses thereto, and the arguments of counsel, this Court determines that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that Underwriters are permitted to view all materials filed under seal in this proceeding related to allegations that Mr. Bennett or the Bennett-Nguyen Joint Venture engaged in insurance fraud or other improprieties concerning the insurance policies. This material includes, but is not

limited to, any motions or exhibits Mr. Essmyer filed relating in any way to allegations that Mr. Bennett or the Bennett-Nguyen Joint Venture engaged in acts of insurance fraud and any responses Mr. Bennett filed to those motion.

SIGNED at Houston, Texas, on this _____ day of June 2010.

DAVID HITTNER
UNITED STATES DISTRICT JUDGE